IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03-07-2007

CORAM :

THE HONOURABLE MR. JUSTICE A. KULASEKARAN

WP No. 31889 of 2006
-o-

Board of Trustees of
Chennai Port Trust
rep. By its Chairman
Rajaji Salai
Chennai - 600 001 .. Petitioner

Versus

1. M/s. Ircon International - Sree
Bhavani Builders (Joint Venture)
Ramakrishnan Street
North Usman Road
T. Nagar, Chennai - 600 017

2. Hon'ble Mr. Justice B.B. Jeevan Reddy
Presiding Arbitrator
Plot No.301, Road No.25
Jubilee Hills
Hyderabad - 33

3. Hon'ble Mr. Justice Rathnavel Pandian
Arbitrator
No.AB-41, 6th Main Road
Anna Nagar
Chennai - 40

4. Hon'ble Mr. Justice Vaman Rao
Arbitrator
Flat No.202-203, Mahasiva Apartments
3-4-874/1/9, Barkatpura
Hyderabad - 27 .. Respondents

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Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr. R. Karthikeyan
For Respondents : Mr. T. Poornam for R1

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ORDER

The petitioner has come forward with this Writ petition praying for a Writ of Certiorarified Mandamus calling for the records in the matter of Arbitration between M/s. Ircon International - Sree Bhavani Builders and Chennai Port Trust and quash the order passed on the said proceedings dated 16.04.2006 and consequently refer the dispute to the High Power Cabinet Committee as per the Supreme Court Judgment stated supra and the Office Memo dated 31.12.1991 issued by the Government of India.

2. The petitioner is a public sector undertaking governed by Major Port Trusts Act, 1963 and is controlled by Ministry of Shipping, Road Transport and Highways, Government of India. The first respondent is a joint venture, in which M/s. Ircon International is a public sector undertaking owned by the Government of India and Sree Bhavani Builders, a Partnership firm. The petitioner invited tenders for the construction of extension of container terminal berth at Bharathi Dock during June 1998 in which, 11 persons, including the first respondent participated and that the first respondent was "L3". On the representation of the first respondent, the Ministry of Shipping, Road Transport and Highways issued a letter dated 22.07.1998 requesting the tender committee of the petitioner to consider the first respondent as it is a Government of India undertaking. The first respondent also sent a letter dated 20.07.1998 requesting the petitioner to consider its representation as per the Government policy circulated by the Ministry of Industry, Department of Public Enterprises, New Delhi dated 31.10.1997 and the subsequent amendment dated 10.02.1998. The petitioner issued a letter dated 18.08.1998 to the first respondent to match the lowest evaluated offer of 'L1" which was agreed and the said contract was awarded to it. The first respondent could not complete the work within the stipulated period but completed it after lapse of 14 months 3 weeks, hence, the petitioner deducted a sum of Rs.1,89,56,740/- payable to it. The first respondent claimed Rs.23,69,26,005/- from the petitioner with interest at 18% and raised the present dispute before the arbitral tribunal consisting of respondents 2 to 4 for recovery of the above said amount. The petitioner filed a memo dated 10.02.2006 before the arbitral tribunal that both the petitioner and M/s. Ircon International are public sector undertakings, hence, the dispute to be referred to cabinet committee constituted by the Government of India as per the directions of Hon'ble Supreme Court in ONGC vs. Collector of Central Excise reported in 1995 (Supp) (4) SCC 541 as well as Official Memorandum dated 31.12.1991 of Government of India praying it to refer the dispute to the high powered committee and keep the matter in abeyance till clearance of the dispute by the said committee, which was dismissed by the arbitral tribunal on 16.04.2006. Challenging the said order, the present writ petition has been filed.

3. Learned counsel appearing for the petitioner submitted that the order of the arbitral tribunal is contrary to law and devoid of merits; that the Honourable Supreme Court held clearly that whenever a dispute arose between two public sector undertakings, to be referred to a cabinet committee so that unnecessary litigation be avoided, which was not considered by the arbitral tribunal; that the work was entrusted to the

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first respondent as it is a public sector undertaking, hence, they are bound to go before the cabinet committee; that the judgment of arbitral tribunal is to be enforced as a civil court decree and the tribunal is an alternative disputes redressal forum, that is, a substitute to regular court of law and its judgment be enforced as a civil court decree, hence, the definition tribunal covers the arbitral tribunal also; that the observation of the arbitral tribunal that it not comes under the definition of Tribunal is incorrect; In support of his contentions, the learned counsel relied on the decision of the Honourable Supreme Court reported in (Oil & Natural Gas Commission vs. Collector of Central Excise) (2004) 6 Supreme Court Cases 437, wherein in Para Nos. 2, 4 and 7, it was held thus:-

> "2. The relevant portion of the memo referred to in the course of this Court's order dated 11-10-19911 reads: (SCC p. 541, para 2)
>
> "It is in this context that the Cabinet Secretariat has issued instructions from time to time to all departments of the Government of India as well as to public sector undertakings of the Central Government to the effect that all disputes, regardless of the type, should be resolved amicably by mutual consultation or through the good offices of empowered agencies of the Government or through arbitration and recourse to litigation should be eliminated ."
>
> 4. There are some doubts and problems that have arisen in the working out of these arrangements, which require to be clarified and some creases ironed out. Some doubts persists as to the precise import and implications of the words "and recourse to litigation should be avoided". It is clear that the order of this Court is not to the effect that - nor can that be done - so far as the Union of India and its statutory corporations are concerned, their statutory remedies are effaced. Indeed, the purpose of the constitution of the High-powered committee was not to take away those remedies. The relevant portion of the order reads: (SCC pp.541-42, para 3)
>
> "3. We direct that the Government of India shall set up a committee consisting of representatives from the Ministry of Industry, the Bureau of Public Enterprises and the Ministry of Law, to monitor disputes between Ministry and Ministry of the Government of India, Ministry and Public sector undertakings of the Government of India and public sector undertakings in between themselves, to ensure that no litigation comes to Court or to a tribunal without the matter having been first examined by the committee and its clearance for litigation. The Government may include a representative of the Ministry concerned in a specific case and one from the

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Ministry of Finance in the committee. Senior officers only should be nominated so that the Committee would function with status control and discipline."

It is abundantly clear that the machinery contemplated is only to ensure that no litigation comes to Court without the parties having had an opportunity of conciliation before an in-house committee.

7. However, as to what the Court or tribunal should do if such judicial remedies are sought before such a court or tribunal, the order of 11-10-1991 clarifies (SCC p.542, para 4)

"4. It shall be the obligation of every court and every tribunal where such a dispute is raised hereafter to demand a clearance from the Committee in case it has not been so pleaded and in the absence of the clearance, the proceedings would not be proceeded with."

Relying on the above said decision of the Honourable Supreme Court, the learned counsel for the petitioner submitted that no dispute between ministry and a ministry of the government of India, a ministry and a public sector undertaking of the government of India and between public sector undertakings themselves shall come to Court or to a Tribunal without the matter having been first examined by the high powered committee constituted under the Chairmanship of Cabinet Secretary, based on the judgment of the Honourable Supreme Court, the Government of India also issued OM dated 31.12.1991 to all departments and public sector undertakings regarding reference and settlement of disputes, hence, the petitioner has filed the memo requesting the arbitral tribunal to refer the dispute to the high powered committee and keep the matter in abeyance till clearance of the dispute by the said high power committee is granted, but the arbitral tribunal failed to consider the above said facts and rejected the memo and prayed for quashing of the impugned order.

4. The learned counsel appearing for the first respondent submitted that the writ petition is not at all maintainable; that the stakes in their joint venture between M/s. Ircon International and Sri Bhavani Builders are in the proportion of 22:78, hence, the private party namely M/s. Sri Bhavani Builders, cannot, by any stretch of imagination be said to be within the meaning of Public Sector Undertaking. The issues involved in the writ petition relating to private disputes between the parties under a contract and are not in the realm of public law. The third and fourth respondents have been appointed as arbitrators by the parties, following arbitration clause in the contract; that the respondents 3 and 4 in turn appointed the second respondent as Presiding Arbitrator; that the writ petition has been filed against the decision of the arbitral Tribunal passed under Section 16 of the Arbitration and Conciliation Act, 1996, (hereinafter referred to as 'the Act') which is a complete code in itself and it sets out the procedures to be followed; that Section 5 of the Act specifically prohibit interference by a court of law in matters governed by Part I of the Act except where so provided

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in the said part. Section 16 (5) of the Act specifically provides that where an arbitral tribunal takes a decision rejecting the plea it shall continue with the arbitral proceeding and make an arbitral award; that Section 16 (6) of the Act provides that a party aggrieved by such an arbitral award may make an application for setting aside the same under Section 34 of the Act. Section 37 (2) of the Act, which provides for appeals against orders does not provide for an appeal against an order rejecting a plea under Section 16 of the Act, hence, the writ petition, challenging the order passed by the arbitral tribunal under Section 16 is not at all maintainable; that arbitration clause is available in the agreement between the parties, hence, M/s. Ircon International has appointed its arbitrator, thereafter, the petitioner had actively participated in the appointment process, appointed an arbitrator and the matter was pending for constitution of arbitral tribunal for two years, but the petitioner not raised any objection nor relied on the Official Memorandum, which was issued in the year 1991, thus, the petitioner submitted to the jurisdiction of the arbitral tribunal and that when once arbitral tribunal takes a decision rejecting the plea, the arbitral tribunal continue, no appeal against the said decision under Section 37 is available and the only remedy is to challenge the final award under Section 34 of the Act. In any event, the writ petition challenging the order passed under Section 16 of the Act is not maintainable and prayed for dismissal of the writ petition. In support of this contention, the learned counsel for the first respondent relied on the below mentioned judgment of the Honourable Supreme Court:-

i) (SBP & CO vs. Patel Engineering Limited and another) 2005 (8) SCC 618 wherein in Para-45 and 47, it was held thus:-

> "45. It is seen that some High Courts have proceeded on the basis that any order passed by an Arbitral Tribunal during arbitration, would be capable of being challenged under Article 226 or 227 of the Constitution. We see no warrant for such an approach. Section 37 makes certain orders of the Arbitral Tribunal appealable. Under Section 34, the aggrieved party has an avenue for ventilating its grievances against the award including any in-between orders that might have been passed by the Arbitral Tribunal acting under Section 16 of the Act. The party aggrieved by any order of the Arbitral Tribunal, unless has a right of appeal under Section 37 of the Act, has to wait until the award is passed by the Tribunal. This appears to be the scheme of the Act. The Arbitral Tribunal is, after all, a creature of a contract between the parties, the arbitration agreement, even though, if the occasion arises, the Chief Justice may constitute it based on the contract between the parties. But that would not alter the status of the Arbitral Tribunal. It will still be a forum chosen by the parties by agreement. We, therefore, disapprove of the stand adopted by some of the High Courts that any order passed by the Arbitral Tribunal is capable of being corrected by the High Court under Article 226 or 227 of the Constitution. Such an intervention by

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the High Courts is not permissible."

47.....
... (vii) Once the matter reaches the Arbitral Tribunal or the sole Arbitrator, the High Court would not interfere with the orders passed by the arbitrator or the Arbitral Tribunal during the course of the arbitration proceedings and the parties could approach the Court only in terms of Section 37of the Act or in terms of Section 34 of the Act."

ii) (Paramjeet Singh Patheja vs. ICDS Limited) 2006 (5) CTC 357 wherein in Para No.43, 44 and 45, it was held thus:-

"43. As already noticed, "litigation" has been held to mean "a legal action, including all proceedings therein, initiated in a Court of law". Obviously therefore Parliament had in mind debts due to "litigants" i.e., debts due by reason of decrees of Courts. It is well settled that Courts, unlike Arbitrators or Arbitral Tribunals, are the third great organ under the Constitution; legislative, executive and judicial. Courts are institutions set up by the State in the exercise of the judicial power of the State will be seen from the cases mentioned hereinbelow:-

"The expression 'Court' in the context (of Article 136) denotes a Tribunal constituted by the State as a part of the ordinary hierachy of Courts which are invested with the State's inherent judicial powers. A sovereign State discharges legislative, executive and judicial function and can legitimately claim corresponding powers which are legislative, executive and judicial. Under our Constitution, the judicial functions and powers of the State are primarily conferred on the ordinary courts which have been constituted under its relevant provisions. The constitution recognised a hierachy of Court and to their adjudication are normally entrusted all disputes between citizens as well as between citizens and the State. These Courts can be described as ordinary courts of civil judicature. They are governed by their prescribed rules of procedure and they deal with questions of fact and law raised before them by adopting a process which is described as judicial process. The powers which these Courts are judicial powers, the functions they discharge are judicial functions and the decisions they reach are and pronounce are judicial decisions."

"In every State there are administrative bodies.... But the authority to reach decisions conferred on such administrative bodies is clearly distinct and separate from the judicial power conferred on Courts, and the decisions pronounced by administrative bodies are similarly distinct and separate in character from judicial decisions pronounced by Courts."

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"Tribunals occupy a special position of their own under the scheme of our Constitution. Special matters are entrusted to them and in that sense they share with the Courts one common characteristic; both the Courts and the Tribunals are constituted by the State and are invested with judicial as distinguished from purely administrative or executive functions'.... The basis and fundamental feature which is common to both the Courts and Tribunals is that they discharge judicial functions and exercise judicial powers which inherently vest in a sovereign State"

"By Courts' is meant Courts of civil judicature and by 'Tribunals' those bodies of men who are appointed to decide controversies arising under certain special laws. Among the power of the State is the power to decide such controversies. This is undoubtedly one of the attributes of the State, and is aptly called the judicial power of the State."

"All Tribunals are not Courts, though all courts are Tribunals. The word 'Courts' is used to designate those Tribunals which are set up in an organised state for the administration of justice."
"It is common knowledge that a 'Court' is an agency created by the sovereign for the purpose of administering justice. It is a place where justice is judicially administered. It is a legal entity".

44. That litigation is therefore very different from arbitration is clear. The former is a legal action in a Court of law where judges are appointed by the State; the latter is the resolution of a dispute between two contracting parties by persons chosen by them to be arbitrators. These persons need not even necessarily be qualified trained judges or lawyers. This distinction is very old and was picturesquely expressed by Edmund Davies, J in these words:

"Many years age, a top-hatted gentleman used to parade outside these law Courts carrying a placade which bore a stirring injunction "Arbitrate - don't litigate"

45. Moreover, the position that arbitrators are not Courts is quite obvious and this Court noted the position as under in two decisions:

"But the fact that the arbitrator under Section 10-A is not exactly in the same position as a private arbitrator does not mean he is a Tribunal under Article 136. Even if some of the trappings of the Court are present in his case, he lacks the basic, essential and fundamental requisite in that behalf because he is not invested with the State's judicial power.... he is not a Tribunal because the State has

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not invested him with its inherent judicial power and the power of adjudication which he exercises is derived by him from the agreement between parties (Engineering Mazdoor Sabha & anr. Vs. Hind Cycles Ltd., AIR 1963 SC 874)"

"There was no dispute that the Arbitrator appointed under Section 19 (1) (b) of the Defence of India Act, 1939 was not a Court (Collector varanasi v. Gauri Shankar Misra & Ors.. AIR 1968 SC 384)"

5. This Court carefully considered the argument of the counsel on both sides. The Honourable Supreme Court in (Oil & Natural Gas Commission vs. Collector of Central Excise) 1995 Supp (4) SCC 541 (Order dated 11.10.1991) directed the Government of India to set up a committee consisting of representatives from the Ministry of Industry, the Bureau of Public Enterprises and the Ministry of Law, to monitor disputes between Ministry and Ministry of the Government of India, Ministry and Public sector undertakings of the Government of India and public sector undertakings in between themselves, to ensure that no litigation comes to Court or to a tribunal without the matter having been first examined by the committee and its clearance for litigation and may include a representative of the Ministry concerned in a specific case and one from the Ministry of Finance in the committee and nominate senior officers so that the Committee would function with status control and discipline. The Honourable Supreme Court further observed that it shall be the obligation of every court and every tribunal where such a dispute is raised hereafter to demand a clearance from the Committee in case it has not been so pleaded and in the absence of the clearance, the proceedings would not be proceeded with. The orders of the Honourable Supreme Court dated 11.10.1991 was subsequently affirmed in the decisions reported in (Mahanagar Telephone Nigam Limited vs. Chairman, Central Board of Direct Taxes) (2004) 6 SCC 431) and (ONG vs. Collector, Central Excise (2004) 6 SCC 437) and again recently in (Punjab and Sind Bank vs. Allahabad Bank (decision dated 28.03.2006) (2006) 4 SCC 780).

6. Pursuant to said Orders of the Honourable Supreme Court, Office Memorandum dated 31.12.1991 was issued by the Government of India (Bharath Sarkar) Cabinet Secretariat (Mantrimandal Sachivalaya) wherein in Para Nos. 3, 4 and 5, it was stated thus:-

"3. Accordingly, it has been decided to constitute a committee consisting of:

1. Cabinet Secretary
2. Secretary, Department of Industrial Development
3. Secretary, Department of Public Enterprises
4. Secretary, Department of Legal Affairs
5. Finance Secretary
6. Secretary of the concerned Ministry/Department.

4. The instructions regarding settlement of disputes between one Government Department and another and one Government Department and a public enterprise and between public enterprise themselves as contained in this Secretariat memo referred to in para 1 above

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need to be strictly followed in all cases. If, however, no final decision can be arrived at following the said instructions, the concerned Ministry/Department or the concerned Public Sector undertaking through their administrative Ministry/Department should refer such cases to the Cabinet Secretariat with a self-contained note for placing before the above constituted committee for decision. Further, it has to be ensured that no litigation involving such disputes is taken up in a Court or a Tribunal without the matter having been first examined by the above constituted Committee and the committee's clearance for litigation is obtained.

5. The foregoing instructions may be brought to the notice of all concerned for guidance and strict compliance."

7. Arguments were advanced by the counsel for the petitioner that both the petitioner and the first respondent are public sector undertakings and the arbitral tribunal is also a Tribunal, hence, the present dispute cannot go on without first obtaining clearance of the said committee of Secretaries.

8. In this case, the first respondent is a joint venture, consisting of Sri Bhavani Builders, a partnership firm and M/s. Ircon International, a public sector undertaking having stakes of 78% and 22% respectively. Hence, the contract between the petitioner and the first respondent cannot be construed just between two public sector undertakings. The arbitral tribunal in its findings mentioned that "In such a situation, it is not permissible for us to split the dispute, suspend one part of it asking Ircon and the CPT to go before the committee of Secretaries for clearance while the remainder of the dispute proceeds before us..." The said finding of fact is exclusive domain of arbitral tribunal which cannot be interfered under Article 226 of the Constitution of India. Considering the above facts, this Court is of the respectful opinion that the clearance of the committee of secretaries does not arise in the case on hand.

9. The arbitral tribunal relied on Para-2 of the judgment of the Honourable Supreme Court reported in 2004 (6) SCC 437 and also the portion of memo submitted by Union of India and extracted the same, which is as follows:-

"It is in this context that the Cabinet Secretariat has issued instructions from time to time to all departments of the Government of India as well as to public sector undertakings of the Central Government to the effect that all disputes, regardless of the type, should be resolved amicably by mutual consultation or through the good offices of empowered agencies of the Government or through arbitration and recourse to litigation should be eliminated."

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It is evident that resolution of disputes through arbitration is permitted along with other modes of "mutual consultation" or "through the good offices of empowered agencies of Government" but restricted recourse to litigation. As rightly pointed out by the arbitral tribunal, the method of arbitration was equated with amicable settlement and settlement through the good offices of empowered agencies of the Government. Hence, the adjudication of disputes by way of arbitration cannot be treated as litigation. Litigation means, a legal action, including proceedings initiated in Court of Law or Tribunal.

10. The other plea of the petitioner is that the arbitral tribunal is also a tribunal, hence, the said plea is to be considered. The arbitral tribunal is not constituted by law, but it is constituted by the parties and the power to decide the dispute between the parties, who appointed it is derived by it from the agreement of the parties and from no other sources. The arbitral tribunal is not a tribunal because the State has not vested it with its inherent judicial power and the power of adjudication which it exercises is derived by it from the agreement of the parties. Similarly, it cannot be called as a Court since its appointment, once made by the parties, is recognised by the Arbitration and Conciliation Act and its appointment is clothed with certain powers and has thus, no doubt, some of the trappings of a Court, does not mean that the power of adjudication, which it is exercising is derived from the State and so. In this context, it is useful to refer to the decision of the Honourable Supreme Court reported in (Engineering Mazdoor Sabha and another vs. Hind Cycles Ltd) AIR 1963 SC 874 wherein in Para-16 it was stated thus:-

> "16. ....Even if some of the trappings of a Court are present in his case, he lacks the basic, the essential and the fundamental requisite in that behalf because he is not invested with the State's inherent judicial power. As we will presently point out, he is appointed by the parties and the power to decide the dispute between the parties who appoint him is derived by him from the agreement of the parties and from no other source. The fact that his appointment once made by the parties is recognised by S.10A and after his appointment, he is clothed with certain powers and thus, no doubt, some of the trappings of a court, does not mean that the power of adjudication which he is exercising is derived from the State and so, the main test which this Court has evolved in determining the question about the character of an adjudicating body is not satisfied. He is not a Tribunal because theState has not invested him with its inherent judicial power and the power of adjudicating which he exercises is derived by him from the agreement of the parties. His position, thus, may be said to be higher than that of a private arbitrator and lower than that of a tribunal. A statutory Tribunal is appointed under the relevant provisions of a statute which also compulsorily refers to its adjudication certain classified classes of disputes. This is the essential

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feature of what is properly called statutory adjudication or arbitration. That is why we think the argument strenuously urged before us by Mr. Pai that a writ of certiorari can lie against his award is of no assistance to the appellants when they contended that such an arbitrator is a Tribunal under Art.136."

In Paramjeet Singh Patheja vs. ICDS Limited) 2006 (5) CTC 357 the Honourable Supreme Court in Para No. 43 and 44 held thus:-

"43. As already noticed, "litigation" has been held to mean "a legal action, including all proceedings therein, initiated in a Court of law". Obviously therefore Parliament had in mind debts due to "litigants" i.e., debts due by reason of decrees of Courts. It is well settled that Courts, unlike Arbitrators or Arbitral Tribunals, are the third great organ under the Constitution; legislative, executive and judicial. Courts are institutions set up by the State in the exercise of the judicial power of the State will be seen from the cases mentioned hereinbelow:-

"The expression 'Court' in the context (of Article 136) denotes a Tribunal constituted by the State as a part of the ordinary hierachy of Courts which are invested with the State's inherent judicial powers. A sovereign State discharges legislative, executive and judicial function and can legitimately claim corresponding powers which are legislative, executive and judicial. Under our Constitution, the judicial functions and powers of the State are primarily conferred on the ordinary courts which have been constituted under its relevant provisions. The constitution recognised a hierachy of Court and to their adjudication are normally entrusted all disputes between citizens as well as between citizens and the State. These Courts can be described as ordinary courts of civil judicature. They are governed by their prescribed rules of procedure and they deal with questions of fact and law raised before them by adopting a process which is described as judicial process. The powers which these Courts are judicial powers, the functions they discharge are judicial functions and the decisions they reach are and pronounce are judicial decisions."

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"Tribunals occupy a special position of their own under the scheme of our Constitution. Special matters are entrusted to them and in that sense they share

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with the Courts one common characteristic; both the Courts and the Tribunals are constituted by the State and are invested with judicial as distinguished from purely administrative or executive functions'.... The basis and fundamental feature which is common to both the Courts and Tribunals is that they discharge judicial functions and exercise judicial powers which inherently vest in a sovereign State"

"By Courts' is meant Courts of civil judicature and by 'Tribunals' those bodies of men who are appointed to decide controversies arising under certain special laws. Among the power of the State is the power to decide such controversies. This is undoubtedly one of the attributes of the State, and is aptly called the judicial power of the State."

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"It is common knowledge that a 'Court' is an agency created by the sovereign for the purpose of administering justice. It is a place where justice is judicially administered. It is a legal entity".

"44. That litigation is therefore very different from arbitration is clear. The former is a legal action in a Court of law where judges are appointed by the State; the latter is the resolution of a dispute between two contracting parties by persons chosen by them to be arbitrators. These persons need not even necessarily be qualified trained judges or lawyers. This distinction is very old and was picturesquely expressed by Edmund Davies, J in these words:

"Many years age, a top-hatted gentleman used to parade outside these law Courts carrying a placade which bore a stirring injunction "Arbitrate - don't litigate"

11. Thus, basic and fundamental feature which is common to both the courts and tribunals is that they discharge judicial functions and exercise judicial powers which inherently vest in a sovereign state, hence, the plea of the petitioner that arbitral tribunal is also a tribunal is rejected.

12. As per the scheme of Arbitration and Conciliation Act, 1996, the arbitration matter has to proceed without any hindrance or obstructions from the Courts, particularly so by writ petition. In no uncertain terms it is clearly stipulated that for sections falling under Part I no judicial authority shall interfere except where so specifically provided in that part. The scheme evolved by Sections 12, 13 and 16 of the Act is of the clear view that spokes should not be put in passing the arbitral

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award. The arbitral tribunal may rule on its own jurisdiction, including ruling on any objection with respect to the existence or validity of the arbitration agreement. Under Section 34, the aggrieved party has an avenue for ventilating its grievances against the award, including any in-between orders that might have been passed by the Arbitral Tribunal acting under Section 16 of the Act. The party aggrieved by any order of the Arbitral Tribunal, unless has a right of appeal under Section 37 of the Act, has to wait until the award is passed by the Tribunal. The object of minimising judicial intervention while the matter is in the process of being adjudicated upon, will certainly be defeated if the High Court could be approached under Article 227 or under Article 226 of the Constitution of India against every orders made by the arbitral tribunal. Followed (SBP & CO vs. Patel Engineering Limited and another) 2005 (8) SCC 618 mentioned supra, hence, the writ petition is not maintainable.

13. The findings relating to plea of estoppel made by the arbitral tribunal is also perfectly valid.

14. In view of the above said discussion, the writ petition is dismissed. No costs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To
1. Hon'ble Mr. Justice B.B. Jeevan Reddy
Presiding Arbitrator
Plot No.301, Road No.25
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Hyderabad - 33

2. Hon'ble Mr. Justice Rathnavel Pandian
Arbitrator
No.AB-41, 6th Main Road
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3. Hon'ble Mr. Justice Vaman Rao
Arbitrator
Flat No.202-203, Mahasiva Apartments
3-4-874/1/9, Barkatpura
Hyderabad - 27

+ 1 CC To Mr.T.Poornam, Advocate SR NO.39823

+ 1 CC To Mr. R.Karthikeyan, Advocate SR NO.39826

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